REMARKS

Favorable reconsideration of this application in view of the foregoing amendments and remarks to follow is respectfully requested. Since the present amendment raises no new issues, and in any event, places the application in better condition for consideration on appeal, entry thereof is respectfully requested.

In the outstanding Office Action, Claims 19 and 20 are objected to because of minor informalities. Claim 17 stands rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. In response to the claim objections/rejections, applicants have amended Claims 17 and 19, and have cancelled Claim 20. Specifically, and in regard to Claim 17, applicants have deleted the phrase "or to a water phase" from the claim. With respect to Claim 19, applicants have amended the same by adding the term "skin-identical free" before the term "sphingoid base".

Applicants submit that the above amendments to the claims obviate the claim rejections/rejections raised in the outstanding Office Action. Reconsideration and withdrawal of the claim objections/rejections are thus respectfully requested.

Claims 1, 4, 7, 10 and 13-18 stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by U.S. Patent Application Publication No. 2002/0010215 to Shiroyama et al. ("Shiroyama et al.").

Concerning the § 102(b) rejection, it is axiomatic that anticipation under § 102 requires that the prior art reference disclose each and every element of the claim to which it is applied. In re King, 801 F.2d, 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1996). Thus, there must be no differences between the subject matter of the claim and the

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disclosure of the prior art reference. Stated another way, the reference must contain within its four corners adequate direction to practice the invention as claimed. The corollary of the rule is equally applicable: Absence from the applied reference of any claimed element negates anticipation. Kloster Speedsteel AB v. Crucible Inc., 793 F.2d 1565, 1571, 230 USPQ 81, 84 (Fed. Cir. 1986).

Applicants submit that the claims of the present application are not anticipated by the disclosure of Shiroyama et al. since the applied reference does not disclose applicants' claimed water-based emulsifier wax gel, as recited in Claim 1, process for preparing the same, as recited in Claim 16, or oil-in-water emulsion, as recited in Claim 18. Applicants observe that in each of these claims at least a *skin-identical free sphingoid base* is employed in conjunction with the other components recited therein.

Shiroyama et al. disclose a clear aqueous ceramide composition with comprises 1 to 5 %, by weight, of a ceramide as recited by formula (I). Applicants observe that the prior art disclosure does not disclose the use of a skin-identical free sphingoid base as a replacement for ceramide in the disclosed aqueous compositions. *Applicants further observe that in the prior art section of Shiroyama et al. it is disclosed in paragraph [0004] that a phytosphingosine-based ceramide (i.e., a ceramide made using a phytosphingosine as a building block) is mentioned in the context of a prior art composition which is free of water.* In addition to not containing water, Shiroyama et al. does not disclose free sphingoid bases. Instead, ceramides are disclosed and illustrated in the prior art reference.

Applicants note that ceramides, such as disclosed in Shiroyama et al., are ***fatty acid amides*** of free sphingoid bases such as phytosphingosine, sphingosine and

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sphinganine. That is, ceramides are composed of sphingosine and a fatty acid. Chemically, ceramides and free sphingoid bases are very different, the latter being primary amines. It is the free amine group, which makes sphingoid bases such as phytosphingosine even more difficult to formulate as compared to ceramides. Whereas both ceramides and free sphingoid bases require high temperatures to get melted in the oil phase, it is only the sphingoid bases which disturb the emulsion formation process resulting in either inhomogenous or instable formulations. In contrast, once ceramides are melted in the oil phase, the emulsion forms easily and exhibits good long-term stability.

In accordance with the applied reference, the ceramides of formula (I) are known compounds that are either recovered from extracts of mammal tissues or synthesized by known process such as disclosed in JP A 7-165690. Applicants again observe that the ceramides of formula (I) are ***fatty acid amides*** of a free sphingoid base and that such ceramades are different from the claimed skin-identical free sphingoid base.

Applicants note that in the Office Action the Examiner also references U.S. Patent No. 5,665,778 to Semeria et al. which patent is an English language equivalent of JP 7-165690. Semeria et al., teaches ceramides of formula (I) which are ***fatty acid amides*** of a free sphingoid base. As indicated above, such ceramides are different from the claimed skin-identical free sphingoid base.

The foregoing remarks clearly demonstrate that the applied reference does not teach each and every aspect of the claimed invention, as required by King and Kloster Speedsteel; therefore the claims of the present application are not anticipated by the

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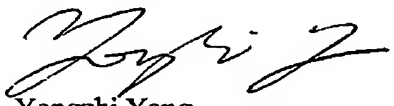
disclosure of Shiroyama et al. Applicants respectfully submit that the instant § 102 rejection has been obviated and withdrawal thereof is respectfully requested.

Claim 20 also stands rejected under 35 U.S.C. § 102(b) are being allegedly anticipated by Shiroyama et al. In response thereto and to advance prosecution of the present application, applicants have cancelled Claim 20 herein.

Thus, in view of the foregoing amendments and remarks, it is firmly believed that the present case is in condition for allowance, which action is earnestly solicited.

Respectfully submitted,



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